IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELALTE SIDE

APPEAL FROM ORDER NO.818 OF 2005
WITH
CIVIL APPLICATION NO.957 OF 2005

Nasruddin Sadruddin Hudda & Ors. ...Appellants.
Vs.
Vasudeo Ananda Kathe & Ors. ... Respondents.

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Mr. S. S. Kanetkar i/b. Mr.G. S.Godbole for the Appellants.
Mr.Vaibhav Sugare for Respondent Nos.5 and 6.
Mr. R.D. Soni i/b. Ram & Co. for Respondent Nos.7 to 9.

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CORAM : DR. D.Y. CHANDRACHUD, J.

November 22, 2005.

P.C.:

The Learned Trial Judge has declined to grant an interim injunction holding that the agreement in favour of Original Defendant Nos. 7 to 9 (Respondent Nos.7 to 9) was dated 14th July 1999 whereas the registered Sale Deed came to be executed in their favour on 1st August 2003 against the payment of a total consideration of Rs.28 lakhs. The Appellants entered into an agreement to sell in respect of the same property on 22nd November 1999 and there is no sale deed in favour of the

Appellants. Therefore, the agreement to sell with the Appellants is of a date subsequent to the agreement to sell with Respondent Nos.7 to 9.

On behalf of the Appellants, it has been submitted that the agreement to sell in favour of Respondent Nos.7 to 9 is a back dated document. It is sought to be urged that the registered sale deed came to be executed on 1st August 2003 nearly four years after the agreement to sell. Moreover, though a public notice was given on 3rd November 1999 on behalf of the Appellant in the newspapers, there was no objection thereto. A finding that the document in favour of Respondent Nos.7 to 9 is ante dated cannot be arrived at an interim stage for it is an issue on which evidence would have to be adduced. That apart, it appears from the agreement to sell with Respondent Nos.7 to 9 that there was a payment on 14th July 1999 by a Banker's cheque in the amount of Rs.50,000/- which was contemporaneous with the date of the execution of the document. On the other hand, all payments which have made by the Appellants are purportedly in cash. There are no details in respect of the payments made by the Appellants. The possession is admittedly with Respondent Nos.7 to 9. In these

circumstances, the order of the Learned Trial Judge declining ad-interim relief does not warrant any interference. The appeal is accordingly dismissed.

In view of the disposal of the appeal, the Civil Application does not survive and is accordingly disposed of.

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